IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION NO : 14105 of 2004

Between:

1 Thatha Venkata Krishna Rao S/o. Koteshwara Rao
Nadimpalle, Kavali Rural Mandal, Nellore District, A.P.
2 Smt. Thatha Vijayalakshmi W/o. thatha Venkata Krishna Rao
Nandimpalle, Kavali Rural Mandal, Nellore District.
3 Udayagiri Srinivas Rao, S/o. Koteshwara Rao
Nadimpalle, Kavali Rural Mandal, Nellore District, A.P.

....PETITIONERS

AND

1 The Mandal Revenue Officer, Kavali, Rural Mandal, Kavali, Nellore District. A.P.
2 The Revenue Divisional Officer, Kavali, Nellore District, A.P.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ or order or direction under Article 226 of the Constitution of India, particularly one in the nature of writ of Mandamus, directing the first respondent herein not to interfere with the possession and enjoyment of the petitioner's lands in an extent ;of Ac. 4.98 Cent Ac. 4-90 Cents and Ac. 4-98 Cents respectively of Survey Nos. 1636, 1637, 1638, 1639, 1640, 1641 of Nadimpalle Village, hamlet of Thumalapenta village of Kavali Rural Mandal, Nellore District and declare the notice issued by the Mandal Revenue Officer, Kavali, Kavali Mandal, Nellore District, A.P., in RCB No. 354/2003 in Rorm No.1, issued to petitioners 1 and Petitioner No.2 dt. 20.7.2004 and show cause notice RCB.No.354/2003, dt. 20.7.2004 as unjust, arbitrary and illegeal after calling for the records.

Counsel for the Petitioners:MR.NUTHALAPATI KRISHNA MURTHY

Counsel for the Respondents: GP FOR REVENUE

The Court made the following :

ORDER:

The petitioners herein were assigned lands in Nadimpalle village, Kavali Rural Mandal. On an allegation that they contravene the conditions of D-Form Patta, the Mandal Revenue Officer initiated action and issued show cause notice dated 20.07.2004 separately to each of the petitioners. The petitioners allege that even before they could issue explanation to show cause notice, the first respondent came to the lands on 21.07.2004 and threatened the petitioners with eviction. Therefore, they filed the present writ petition seeking a writ of mandamus directing the respondents not to interfere with the possession of the land.

A reading of the affidavit accompanying the writ petition would show that, in effect the petitioners are challenging the show cause notice dated 20.07.2004 issued by the first respondent to the petitioners. It is now well settled that against show cause notice, a writ petition would not lie (**See State of U.P. v Shri Brahmadatta Sharma**).

In a recent judgment in **Special Director v Mohd. Ghulam Ghouse**, the Supreme Court again reiterated the law observing as under:

This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted.

Therefore, the writ petition cannot be entertained. Further, the grievance of the petitioners that even before the matter is decided, the first respondent is trying to evict the petitioners is not well founded. In view of the show cause notices issued, the petitioners are given liberty to give explanations. As and when explanations are submitted, it shall be open to the first respondent to consider the same and pass appropriate orders in accordance with law. Further liberty is reserved to the petitioners to file appeal before the second respondent, if any adverse orders are passed by the first respondent.

The writ petition, with the above observations, is dismissed.

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(V.V.S.RAO,J)

10.08.2004.

pln

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Mandal Revenue Officer, Kavali Rural Mandal, Kavali, Nellore District.
2. The Revenue Divisional Officer, Kavali, Nellore District.
3. 2 CCs to the G.P. for Revenue, High Court of A.P., Hyderabad (OUT).
4. 2 CD copies.